

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**WASEEM DAKER,**

**Plaintiff,**

**vs.**

**JAMES DONALD, et al.,**

**Defendants.**

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**5:04CV337 (DF)**

**ORDER**

This order is in reference to the Report and Recommendation that United States Magistrate Judge Claude W. Hicks, Jr. filed in this case on April 29, 2005. The report recommended that Plaintiff's motion to amend his complaint be denied. The Court has reviewed and carefully considered Defendant's objections to the Magistrate Judge's Recommendation, but concludes that these objections do not warrant rejection of the Magistrate Judge's findings, rather modification. Plaintiff may not amend his complaint to add facts, claims or defendants relating to retaliation, movement between facilities, and personal safety. However, Plaintiff may amend his complaint to add additional facts relating to his smoking claim. Specifically, Plaintiff may add paragraph numbers 15, 18<sup>1</sup>, 19, 21, 28, 32, 35, 36, 38, 39, 40, 41, 42, 44, 53, 57, 58, 62, and 63 as listed in his proposed first amended complaint. Should Plaintiff decide to amend his complaint, he must file an amended complaint, which includes these paragraphs, and only these paragraphs, with the clerk within ten days from the date of this Order.

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<sup>1</sup> Plaintiff has listed two paragraphs numbered eighteen. The paragraph Plaintiff may add is the first number eighteen, which begins "While at Philips State Prison. . . ."

Accordingly, Plaintiff's Motion to Amend is **GRANTED** in part and **DENIED** in part.

SO ORDERED, this 25<sup>th</sup> day of May, 2005.

/s/ Duross Fitzpatrick  
DUROSS FITZPATRICK, JUDGE  
UNITED STATES DISTRICT COURT

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